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DEPARTMENT OF HOMELAND SECURITY

4910-15-U

COAST GUARD

33 CFR PART 165

[CGD09-04-049]

USCG-2004-19416-37

RIN 1625-AA00

Safety Zone; Muskegon Air Fair, Mona Lake, Muskegon, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Muskegon Air Fair. The safety zone is necessary to protect vessels, participants and spectators during the Muskegon Air Fair. This safety zone is intended to restrict vessel from a portion of Mona Lake, Muskegon, Michigan.

DATES: This temporary final rule is effective from 7:00 a.m. (local) on July 2, 2004, until 9:00 p.m. (local) on July 4, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CDG09-04-049] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Chicago, Illinois 60527, between 7:30 a.m. (local) and 4:00 p.m. (local), Monday through Friday, except Federal holidays.

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FOR FURTHER INFORMATION CONTACT: ENS Christopher Brunclik,
U.S. Coast Guard Marine Safety Office Chicago, at (630)
986-2155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of participants and spectators from the hazards associated with an air and water show. All persons and vessels shall comply with the instructions of the Coast

Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Chicago or her designated on scene representative. The Captain of the Port Chicago's designated on scene representative will be the Patrol Commander. The Patrol Commander may be contacted via VHF Channel 16.

Discussion of Rule

The safety zone will encompass all waters and adjacent shoreline of Mona Lake bounded by the following positions, Northwest $43^{\circ} 10.8' N$, $086^{\circ} 14.4' W$; Northeast $43^{\circ} 11.0' N$, $086^{\circ} 14.20' W$; Southwest $43^{\circ} 10.67' N$, $086^{\circ} 14.46' W$; and Southeast $43^{\circ} 10.91' N$, $086^{\circ} 14.22' W$. These coordinates are based upon North American Datum 1983 (NAD 1983).

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the

Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule will have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect for a period of 3 days and allows vessel traffic to pass through the safety zone with the permission of the Captain of the Port or his designated on scene representative. Before the effective period, we will issue maritime advisories widely

available to users of Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of

this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3 (b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on

the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable

law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits the category from paragraph (34)(g) because it establishes a safety zone. Under figure 2-1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

LIST OF SUBJECTS IN 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Record Keeping Requirements, Security Measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. A new temporary § 165.T09-049 is added to read as follows:

§ 165.T09-049 Safety Zone; Mona Lake, Muskegon, Michigan.

(a) Location. The safety zone will encompass all waters and adjacent shoreline of Mona Lake bounded by the following positions, Northwest 43°10.8' N, 086°14.4' W; Northeast 43°11.0' N, 086°14.20' W; Southwest 43°10.67' N, 086°14.46' W; and Southeast 43°10.91' N, 086°14.22' W. These coordinates are based upon North American Datum 1983

(NAD 1983).

(b) Effective period. This rule is effective from 7:00 a.m. (local) on July 2, 2004, until 9:00 p.m. (local) on July 4, 2004. This section will be enforced from 2:00 p.m. (local) to 5:00 p.m. (local) daily, on July 2nd, 3rd, and 4th, 2004.

(c) Regulations.

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within the temporary safety zone is prohibited unless authorized by the Captain of the Port Chicago or her designated on scene representative. The Captain of the Port Chicago or her designated on scene representative may be contacted via VHF Channel 16.

(2) The "designated on scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on her behalf. The designated on scene representative is the Patrol Commander. The Patrol Commander will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Chicago or her on scene representative in order to

obtain permission to do so. Vessel operators given
permission to enter or operate in the safety zone shall
comply with all directions given to them by the Captain of
the Port Chicago or her on scene representative.

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DATED: July 1, 2004



L. M. Koepke

Commander, U.S. Coast Guard

~~Alternate~~ Captain of the Port Chicago

Acting